JUAN C. MARTINEZ

IBLA 96-464 Decided March 20, 1998

Appeal from a Decision of the Taos Resource Area Manager, Bureau of Land Management, New Mexico, rejecting color-of-title application NMNM 57928.

Affirmed.

1. Color or Claim of Title: Applications

> A class 1 color-of-title claim requires proof that the land has been held in good faith and in peaceful adverse possession by a claimant, his ancestors, or grantors for more than 20 years, under claim or color of title based on a document from a party other than the United States which on its face purports to convey the claimed land to the applicant or the applicant's predecessors and that valuable improvements have been placed on the land or some part of the land has been reduced to cultivation. An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory requirements for purchase under the Act have been met, and a failure to carry the burden of proof with respect to one of the requirements is fatal to the application.

APPEARANCES: Juan C. Martinez, pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Juan C. Martinez has appealed from a May 29, 1996, Decision of the Taos Resource Area Manager, Bureau of Land Management (BLM), New Mexico, rejecting his color-of-title application NMNM 57928. The application, filed on July 16, 1984, was for 5.09 acres described as lot 55, sec. 35, T. 23 N., R. 10 E., New Mexico Principal Meridian. Martinez filed his application under class 1 of the Color of Title Act, 43 U.S.C. § 1068 (1994), and under the Act of February 23, 1932, 47 Stat. 53 (43 U.S.C. § 178 (1994)).

In his application, Martinez stated that his father acquired the land in 1915 and that he, Martinez, inherited it in 1941. He stated further that the land had been cultivated for many years and improvements placed thereon in 1934 and that he first learned in 1977 that he did not have clear title.

In his Decision, the Area Manager found that Martinez had failed to provide deeds for the parcel and therefore was unable to show a claim or color of title. Insofar as the Act of February 23, 1932, was concerned, the Area Manager found that the claim failed for the additional reason that the land was not contiguous to a Spanish or Mexican land grant.

[1] Section 1 of the Color of Title Act, 43 U.S.C. § 1068 (1994), sets forth the requirements that must be met by a claimant in order to receive a patent under the Act:

> The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, or (b) may, in his discretion, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units, issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than $1.25 per acre * * *.

The Act of February 23, 1932, 43 U.S.C. § 178 (1994), specifies "a tract or tracts of public land, contiguous to a Spanish or Mexican land grant in the State of New Mexico" and similarly contains the requirements for good faith, and for peaceful, adverse possession for 20 years under color or claim of title.

A claim under part (a) of 43 U.S.C. § 1068 (1994), is defined by the Department as a claim of class 1; a claim under part (b) is defined as a claim of class 2. 43 C.F.R. § 2540.0-5(b). Since Martinez' application was under a claim of class 1, he must show, inter alia, that lot 55 has "been held in good faith and in peaceful, adverse, possession by [him], his ancestors or grantors, under claim or color of title for more than twenty years."

The burden of establishing that all the requirements of the Act have been met is upon Martinez. Corrine M. Vigil, 74 IBLA 111, 112 (1983). In this case, the missing statutory requirement is an instrument or document

which, on its face, purports to convey title to the land sought. Shirley and Pearl Warner, 125 IBLA 143, 148 (1993); James G. Stockton, 111 IBLA 344, 347 (1989), and cases there cited. A color-of-title claim must be based upon a document from a source other than the United States which on its face purports to convey the land to the applicant or his predecessor. Martinez has not offered an instrument to establish a chain or claim of title to the land. His claim is based simply on the acquisition of the land by his father in 1915 and the applicant's inheritance of the land from his father in 1941. As Martinez has produced no document providing color of title, his application was properly rejected. James G. Stockton, supra, at 349.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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James P. Terry
Administrative Judge

I concur:

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James L. Burski
Administrative Judge